UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In the Matter of:	)	Chapter 13
	)	
Grady Rush and Overia Rush,	)	NO.: 16-39161
	)	
Debtors	)	Judge Timothy A. Barnes

Grady Rush and Overia Rush,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Adversary No.
	)	
Linda McMahon, Administrator of the U.S. Small Business Administration,	)	
	)	
Defendant	)	

COMPLAINT TO DETERMINE NATURE AND EXTENT OF LIEN AND TO AVOID SECONDARY MORTGAGE LIEN OF THE ADMINISTRATOR OF THE U.S. SMALL BUSINESS ADMINISTRATION

NOW COME the Plaintiffs, GRADY RUSH and OVERIA RUSH, by and through their attorney, LORRAINE M. GREENBERG, complaining of the ADMINISTRATOR OF THE U.S. SMALL BUSINESS ADMINISTRATION, LINDA MCMAHON, the Defendant, (hereinafter "Defendant"), seeking to determine the nature and extent of the subordinate lien of said Defendant and to avoid the subordinate lien of said Defendant, and in support thereof state as follows:

1. The Plaintiffs are Debtors in the above-captioned Chapter 13 case which was commenced on December 13, 2015 by filing a petition for the adjustment of debts of an individual with regular income under Title 11 of the United States Code.

2. The Chapter 13 case is still pending before this Honorable Court.

3. This Honorable Court has jurisdiction pursuant to 28 U.S.C. § 1334 and 28 U.S.C. §§ 157 (a) and (b). This Court has jurisdiction pursuant to 28 U.S.C. § 157(b), as this is a "core proceeding" within the meaning of 28 U.S.C. § 157(b)(2)(A).

4. This Complaint arises under 11 U.S.C. §506(a) and 11 U.S.C. §1322(b)(2).

5. Venue is proper pursuant to 28 U.S.C. § 1409(a).

6. The Plaintiffs are each individuals and currently resides at what is commonly

known as 8715 S. Marshfield, Chicago, Cook County, Illinois.

7. The Plaintiffs own this improved real property in Chicago, Illinois, legally described as follows:

> In Block One (1) in Englewood Heights, being a Resubdivision of Wrights subdivision of the North Half (1/2) of that part of the East Half (1/2) of Section 6, Township 37 North, Range 14, East of the Third Principal Meridian, lying East of the P.C. and St. L.R.R. in Cook County, Illinois
>
> PIN: 25-06-206-038-0000

8. There are two mortgage liens on the property. The first lien is a mortgage and note currently serviced by Ocwen Loan Servicing LLC. A copy of the original mortgage is attached hereto and marked as Exhibit "A". The original mortgage is dated July 26, 1999 and was recorded on August 4, 1999 as Document No. 99741513 in the Office of the Recorder of Deeds for Cook County, Illinois. The original principal amount of the Note was for $91,025.00 with an APR of 9.75 per cent. The original Note was with Bank One, but was subsequently assigned to GMAC Mortgage Corp., and then later assigned to Wells Fargo Bank. The original loan has also been modified.

9. The subordinate mortgage and note is currently held by the Defendant. A copy of this subordinate mortgage is attached hereto and marked as Exhibit "B". This mortgage is dated December 15, 2001 and was recorded on January 30, 2002 as Document No. 0020125963 in the Office of the Recorder of Deeds of Cook County, Illinois.

10. No proof of claim has been filed on behalf of the primary lienholder at this time but it is estimated that the balance due is approximately $100,000.00. See a copy of Debtor's Schedule "D" attached hereto as Exhibit "C" and incorporated herein.

11. The current market value of the real property securing the two liens is $83,000.00. Attached hereto as Exhibit "D" is a recent appraisal done of the improved real property that is the subject matter of this Complaint.

12. As the junior mortgage lien held by the Defendant is unsupported by any secured value of the real property, and is wholly unsecured, it should not be allowed as a secured claim and its mortgage lien can and should be avoided.

13. Pursuant to Section 506 of the Bankruptcy Code, the above referenced junior mortgage should be declared void as a lien, notwithstanding any personal liability of the Plaintiffs on the claim.

WHEREFORE, the Plaintiffs respectfully pray for judgment as follows:

A. Declaring the subordinate lien of Defendant, Administrator of the U.S. Small Business Administration, recorded as Document No. 0020125963 by the Cook County Recorder of Deeds, to be wholly unsecured as to the Plaintiffs' improved real property, and that any proof of claim filed by the Defendant in Debtors' Chapter 13 Case No. 16-39161 be treated as an unsecured claim;

B. Declaring said lien to be avoided, provided Plaintiffs obtain a Discharge in the underlying Chapter 13 Case No. 16-39161.

C. Disallowing any secured claim filed on behalf of the Defendant on account of the alleged subordinate mortgage and note on Plaintiffs' real property;

D. Declaring the Defendant's subordinate lien to have no further legal effect provided Plaintiffs both obtain a Discharge in the underlying Chapter 13 case no. 16-39161.

E. And for such other relief as this Court deems necessary and just.

Respectfully submitted,

Grady Rush

Overia Rush

BY: /s/ Lorraine M. Greenberg
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